

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

PINNACLE PACKAGING COMPANY,)
INC., an Oklahoma corporation,)
POLO ROAD LEASING, LLC, an Okla-)
homa limited liability company, and)
J. SCOTT DICKMAN,)

Plaintiffs,)

vs.)

Case No. 12-CV-537-JED-TLW

CONSTANTIA FLEXIBLES GmbH, an)
Austrian corporation, and)
ONE EQUITY PARTNERS (EUROPE) GmbH,)

Defendants.)

**MOTION OF PLAINTIFFS FOR DISCOVERY CONFERENCE
WITH COURT ON HEARING FROM JUNE 22, 2015
RE: INTERROGATORY NO. 5**

Plaintiffs, Pinnacle Packaging Company, Inc., Polo Road Leasing, LLC, and J. Scott Dickman (“Plaintiffs”), move for a conference with Magistrate Wilson filed pursuant to the Order of July 1, 2015 [DKT 114] on the supplemental response of Defendants to Interrogatory Nos. 5. In support of this Motion, the Movants show the Court:

1. This Court entered its Order [DKT 114] on 7/1/15 on Plaintiffs’ motion to compel. See attached Exhibit 1. The Order addressed Interrogatory No. 5 to Constantia on pp. 4-5.

2. Interrogatory No. 5 and the response and supplemental response filed by Constantia are attached as Exhibit 2. The documents identified in the supplemental response are attached as Exhibit 3.

3. Interrogatory No. 5 specifically asks (emphasis added),

(i) State **the terms of each** of “Plaintiffs’ own fraudulent misrepresentations,” that are asserted in your 16th affirmative defense in Your Answer filed January 20, 2015

...

Constantia did not answer by a rule 33(c) response. In its response Constantia stated in pertinent part:

The projections Plaintiffs provided to Constantia - including but not limited to the EBITDA margin for 2013 and 2014 conveyed by Scott Dickman and Chris Payne to Richard Kelsey during a meeting on July 13, 2012 - did not represent a complete picture of the actual EBITDA of the business.

In its supplemental response, Constantia stated in pertinent part:

The projections provided to Constantia - including the EBITDA margin for 2013 and 2014 conveyed by Scott Dickman and Chris Payne to Richard Kelsey during a meeting on July 13, 2012 - did not represent a complete picture of the actual EBITDA of the business.

Neither of these responses states the “terms” of the misrepresentation, *i.e.*, what was “the EBITDA margin for 2013 and 2014” that was conveyed? Moreover, though Defendants did not make a Rule 33(c) response, none of the documents reflect in a manner that can be understood what the so-called projections, or “EBITDA margin for 2013 and 2014” were in a manner that complies with Rule 9 F.R.Civ.P.

4. The Plaintiffs are entitled by their Interrogatory No. 5 to a description of the “terms” of the misrepresentation(s).

5. Plaintiffs have contacted the Defendants in person in an effort to resolve this issue, and the emails attached reflect their exchange. In Exhibit 4, Defendants’ counsel responded by email in a manner to give a purported “for example” answer by focusing on a small notation appearing on page Defendants_00006885 that is part of Exhibit 3. Moreover, this statement on a significant Affirmative Defense is not verified. In Exhibit 5, Plaintiffs’ counsel requested a verified answer. This has been rejected.

WHEREFORE, the Movants respectfully request that the Court set a hearing and a conference as appropriate.

s/ Laurence L. Pinkerton

Laurence L. Pinkerton, Esq. (OBA #7168)

PINKERTON & FINN, P.C.

Penthouse Suite

15 E. 5th Street

Tulsa, Oklahoma 74103-4303

(918) 587-1800

(918) 582-2900 fax

pf@att.net

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2015, I electronically transmitted the foregoing pleading, to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

John D. Russell, Esq.
GABLEGOTWALS
1100 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103-4217

Cheryl Howard, Esq.
Aaron Lang, Esq.
Marshall Fishman, Esq.
FRESHFIELDS BRUCKHAUS DERINGER US LLP
601 Lexington Ave., 31st Floor
New York, NY 10022

s/ Laurence L. Pinkerton